

# Washington state is in court over school funding, again. Here's what's at stake



Demonstrators stand on the steps of the Temple of Justice and in view of the Legislative Building as they advocate for more state spending on education prior to a hearing before the state Supreme Court in 2014, in Olympia. Attorneys for Washington state will be in court again Wednesday as the state Supreme Court holds another hearing to decide whether to lift contempt sanctions from the McCleary school-funding case. Elaine Thompson AP file, 2014

By Melissa Santos  
The News Tribune  
September 3, 2016

Washington state has been here before, but this time the stakes are higher.

Attorneys for the state will appear Wednesday before the state Supreme Court to argue — once again — that lawmakers have [complied with court orders to boost public school funding](#).

On the other side of the courtroom will be attorneys representing the coalition of parents, school districts and education groups that sued the state almost 10 years ago and maintains that lawmakers still haven't done enough.

The state is in contempt of court and accruing fines of \$100,000 a day over the Legislature's failure to produce a plan to fully fund public schools by 2018.

The hearing marks the latest development in the McCleary case, in which the state Supreme Court ruled in 2012 that the Legislature was failing to fully fund basic education and must correct school-funding problems by 2018.

The state is [now in contempt of court](#) and accruing fines of \$100,000 a day over the Legislature's failure to produce a plan to meet the 2018 funding deadline.

On Wednesday, the court's nine justices will hear arguments to help them decide whether to lift the contempt sanctions, or to impose more serious penalties that could dramatically alter next year's budget debates at the state Capitol.

Here's what the next steps might look like.

#### [What the court might do](#)

**The dangling anvil:** Earlier this year, state lawmakers passed legislation [forming a task force to work on school-funding issues](#) and promising to fix remaining problems in 2017.

Attorneys for the state argue that measure constitutes the complete funding plan the court asked for more than two years ago, while attorneys for the McCleary plaintiffs say it's just another empty promise.

The plaintiffs are asking the court to ensure the Legislature keeps its word by promising to dramatically increase sanctions in the future if lawmakers don't follow through.

That could mean issuing an order that will shut down the state's school system next fall if lawmakers fail to act by then, or striking down all state-approved tax breaks as unconstitutional on the first day of the 2017-18 school year. Those options are advocated by the plaintiffs' lead attorney, Thomas Ahearne, in the most recent brief he filed with the court.

The threat of delayed sanctions — as opposed to ones that would take effect immediately — would avoid an urgent crisis that Gov. Jay Inslee might have to call a special session of the Legislature to address. As it stands, lawmakers aren't scheduled to reconvene until January, and are expected to spend six months or more hashing out a McCleary solution next year.

Either of Ahearne's proposed sanctions would give lawmakers time to do that work.

The last time the Supreme Court ordered a court hearing in the McCleary case, two years ago, the justices came back with a ruling finding the state in contempt just eight days later.

**The nuclear option:** Alternatively, the court could ramp up sanctions even sooner than the McCleary plaintiffs suggest.

That could mean issuing an order in the coming months that immediately shuts down schools, or invalidates billions of dollars in corporate tax breaks — a step that could prompt an emergency session of the Legislature, or at a minimum force lawmakers to come up with a solution much sooner in 2017 than they had planned.

Taking this step would enrage many lawmakers who already think the state Supreme Court has overstepped its bounds by demanding a funding plan and monitoring the Legislature's progress in the McCleary case.

**Nothing:** The court could acknowledge the progress the Legislature has made addressing many problems outlined in the McCleary ruling, and simply continue to impose the [\\$100,000-a-day in fines that it first ordered in August 2015](#).

To date, those fines total more than \$37 million, which the court ordered to be placed in a separate account to benefit basic education.

Lawmakers didn't move to actually transfer that money this year. Some top lawmakers said the fines could be easily paid out of reserve money left in the state general fund, so actually moving the money wasn't necessary.

Even if the fines continue to accrue another year, they are a drop in the bucket for state lawmakers, who are tasked next year with approving a new two-year budget expected to top \$39 billion.

**Backing away:** The court could lift the fines, along with its 2014 order finding the state in contempt of court.

This route is unlikely, given that the court has asked the state to explain exactly how [lawmakers will pay for school-funding fixes and how much they will cost](#) — things the Legislature has yet to agree on.

However, lifting the sanctions is [the path recommended by the state's attorneys](#), who argue the lawmakers have not yet blown the 2018 McCleary funding deadline and are on track to meet it.

Attorneys for the state also argue lawmakers should have until the start of the 2018-19 school year to put their plans in motion — a timeline the McCleary plaintiffs say is a yearlong delay the court should reject.

### How long a decision might take

It's hard to say how long a ruling might take, but it could easily come within the month. The last time the Supreme Court ordered a court hearing in the McCleary case, two years ago, the justices came back with a ruling finding the state in contempt just eight days later.

Last year, the court came back with an order imposing monetary fines about a month after the Legislature adjourned without a school-funding plan and less than two weeks after attorneys in the case finished filing legal briefs about what lawmakers did and didn't accomplish.

Given the seriousness of the sanctions the court is being asked to consider this year, however, the justices might take longer to make their decision.

Either way, it will most likely come within three or four months, before the Legislature reconvenes in January.

Read more here: <http://www.thenewstribune.com/news/politics-government/article99718447.html#storylink=cpy>